

**LAKE COUNTY BOARD of ADJUSTMENT**  
**February 8, 2017**  
**Lake County Courthouse Commissioners Office (Rm 211)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Don Patterson, Frank Mutch, Steve Rosso, Merle Parise, Mary Jensen

**STAFF PRESENT:** Jacob Feistner, Wade Humphries, Lita Fonda, Wally Congdon

Frank Mutch called the meeting to order at 4:00 pm. He invited new member Mary Jensen to introduce herself, which she did. The other members did likewise. Frank also invited the newest planner, Wade Humphries to introduce himself, which he did.

**SELECTION OF 2017 OFFICERS (Chair & Vice Chair)**

**Motion made by Steve Rosso, and seconded by Merle Parise, for Frank Mutch as chair. Motion carried, all in favor.**

**Motion made by Steve Rosso, and seconded by Merle Parise, for Don Patterson as vice-chair. Motion carried, all in favor.**

**WAATTI DENSITY VARIANCE (4:05 pm)**

Wade Humphries presented the staff report. (See attachments to minutes in the February 2017 meeting file for staff report.) He pointed out the public comment received from a neighbor, Ruth White, after the staff report had been done. Her biggest concerns were the overlapping water rights and the density of the surrounding area, which she felt was beginning to look more like suburbia. The water rights would be handled by DEQ during the subdivision review. The Department of Natural Resources (DNRC) website showed that the Waattis appeared to have 3 different water rights for the area. Staff had taken the 'suburbia' concern into account, which was discussed with staff recommendations portion of the staff report.

Mary asked what would happen to the septic and water with one property sold, and if the road would have an easement. Agent Bob Erickson from Jackola Engineering affirmed there would have to be a shared agreement for the [septic and water] systems and the road would have an easement with a road maintenance agreement and it would also be handled through the [subdivision] process. He added he was here to answer questions. Dave Waatti, owner, was here and also Kary Tonjum.

Dave Waatti spoke. Kary owned the other property. They didn't want to change things on the property. They just wanted to sell it. Don checked which property would be sold. Dave indicated the smaller one. Kary explained it was a common agreement. The property was currently one piece. Dave Waatti was his uncle. Frank asked about overlapping water rights. Wade suggested Environmental Health would be better able to answer those types of questions, which would be addressed once the actual subdivision application was received and moved through the proper channels to DEQ (Department of

Environmental Quality) and Environmental Health. Dave said they had a water permit for irrigation for most of the property. They shared a well. Frank termed this a community water system. Jacob said when they searched the water right on the DNRC water query, the water right had multiple names on it rather than a single owner. Wade explained two of the water rights. One was for surface water from April 1 to Nov. 1 for irrigation purposes. That was between the two gentlemen here. The second one was for groundwater. It had 4 different families on it. He believed this was from the original subdivision exemption from the mid-seventies. Dave said they drilled the well on the property after they bought it. It supplied both houses. Kary thought when they bought the property from the Whites, those water rights somehow stayed on. Steve learned that Ruth White's property lay to the east of the subject property.

Merle referred to attachment 2 and drainfields. Bob Erickson explained it was a requirement to have an area large enough for a replacement drainfield. The existing drainfield was right up against the right-of-way line of the road. Dave described the well location on the [Thompson] property to the west, and the group further consulted maps regarding wells and features, such as the boundary line around the tool shed.

Steve asked about the lake frontage. Kary estimated about 345 feet for the whole length. Steve asked about the frontage for each of the lots if divided. It didn't add up. Bob Erickson said the smaller, lot 1, would be 115 feet and the other lot would be [inaudible]. This was a very preliminary drawing. Wade clarified that Planning hadn't yet received the actual subdivision application. They were just here to address the density variance.

Steve described the sizes of the nearby lots. Was the 100-foot width or more typical? Dave said some were a lot less than that. Mary asked if those properties had cabins on them. Dave said they got along with Ruth White. He wasn't sure where she was coming from. He thought she might be referring to along the whole lake. Steve noted her family used to own extensive property around the lake.

*Public comment opened:*

Wally Congdon said this wasn't required for relatives, but if either had family who wanted to sell it, they would have no choice but to have a road maintenance agreement and easements done. Since the 1980's, in order for federal money to insure the loan, you either had the agreements or you couldn't borrow the money. Mary observed that was why so many properties in the Bitterroot at that time were on contracts for deed. Wally said they got around it that way. The advantage to not splitting the water right was they now had one POU (place of use) and one POD (point of diversion), which was easier and less expensive. He thought the engineering firm and the Waattis did a nice job of figuring out what they had to do long term to avoid the issues that usually came up.

Frank asked if they had a community well agreement. Dave replied no. Frank thought it was a good idea to develop one. Jacob said the subdivision review required shared maintenance for any shared infrastructure prior to final approval.

*Public comment closed.*

Steve thought even though it was quite a deviation from the DMR, there were similarly sized lots in the neighborhood and it was a reasonable request. He asked what a future owner would do if they wanted a guest house, given the deed restrictions. What were their options? Jacob said they didn't have any. This was a conditional approval based on that [deed restriction]. If that condition went away, they didn't have the approval. Frank asked if that was a problem. Dave didn't think so. It was time for him to sell it. Steve asked if the suggested conditions were acceptable. Dave confirmed.

**Motion made by Steve Rosso, and seconded by Don Patterson and Mary Jensen, to approve the variance based on the findings of fact and the conditions as presented in the staff report. Motion carried, all in favor.**

**MINUTES (4:35 pm)**

**Motion made by Frank Mutch, and seconded by Don Patterson, to approve the Sept. 14, 2016 meeting minutes as presented. Motion carried, all in favor.**

**OTHER BUSINESS (4:36 pm)**

Revision of the bylaws to adjust the order of business was discussed, along with other possible changes, including time limitations on speakers. Four submitted items were anticipated for next month.

Recusal and abstention were touched upon again and the appropriate behavior connected to those. For recusal, it had been recently outlined that one should move from the Board table, with the preference being to leave the room to avoid the appearance of influence and with the lesser option being to join the audience. To abstain from the vote was different.

Bill Barron contributed that a commissioner might abstain from the vote but still give input. Steve pointed to that happening at planning board meetings during public comment. Wally's view was to recuse yourself if you had a conflict of interest. If you still talked about it, you had an unfair advantage to weight the equation. A process must not only be fair but appear to be fair. To the average citizen, if a board member recused and then talked about it, would this appear to be fair? Maybe not. If the board member had generic information needed for the decision and was neither for nor against the item and qualified it that way, that would look fair. Bill and Wally disagreed on the presentation of input. Bill thought the members had the right to give input. Wally thought that might put the county at risk. The various points were discussed at greater depth. Bill suggested putting how to address these questions in the bylaws.

Abstentions were discussed. Bill said if you abstained, you were supposed to give your reason why. If you couldn't make a decision, you were shirking the responsibility of your position. Steve said you could abstain when you didn't have the information. Wally clarified that in a small county, the fact that you knew someone wasn't a reason to abstain or recuse, nor was knowledge, such as engineering. The reasons were if you had

a benefit, it affected you in a way or you were trying to give someone a benefit. Steve added that it might also appear you had a benefit. Discussion with examples continued.

Regarding the earlier discussion on bylaws and time limits on public comment, Wally said you could do so provided everyone had the same limit but it was cumulative. For example, if ten people in favor showed up and each spoke for 3 minutes, that was fine but if one person showed up against, that person should then get the same 30 minutes.

**Motion made by Frank Mutch, and seconded by Merle Parise, to adjoin. Motion carried, all in favor. Meeting adjoined at 5:15 pm.**